IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2007

CORAM

THE HONOURABLE MR. JUSTICE P.K.MISRA
AND
THE HONOURABLE MR. JUSTICE K.MOHAN RAM

Habeas Corpus Petition No.1097 of 2006

Venkatesan @ Maya Venkatesan .. Petitioner

-Vs.-

1. State of Tamil Nadu,
   Represented by its Secretary,
   Prohibition and Excise Department,
   Fort St. George, Chennai - 600 009.

2. The Commissioner of Police,
   Greater Chennai,
   Commissioner's Office,
   Egmore, Chennai - 600 008. .. Respondents

Prayer.:- Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus calling for the records of the detention order No.217/2006 dated 15.08.2006, on the file of the second respondent herein and quash the same and direct the respondents herein to produce the body of the detenue Venkatesan @ Maya Venkatesan before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. Natarajan
Senior Counsel for M/s. A. Madhumathi.

For Respondents : Mr. M.Babu Muthu Meeran,
Additional Public Prosecutor.

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O R D E R

K.MOHAN RAM, J.

The detenu was detained as a "Goonda" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of

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1982), by the impugned detention order, dated 15.08.2006. This Habeas Corpus Petition is filed by the detenu himself challenging his detention.

2. Heard Mr.Natrajan, learned senior counsel for the petitioner and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor for the respondents.

3. The learned senior counsel for the petitioner made the following submissions:-

(i) By referring to the following passage contained in para 4 of the grounds of detention namely:

> "Para 4. I am aware that Thiru. Venkatesan @ Maya Venkatesan is in remand in Chennai City Central Crime Branch "X" Crime Nos.472/2006, 492/2006, 499/2006, 633/2006, 634/2006, 635/2006 and 638/2006 and he moved bail applications before the XI Metropolitan Magistrate Court, Saidapet, Chennai, in Crl.M.P.Nos.2585/2006 to 2687/2006, Crl.M.P.Nos.2633/2006 to 2635/2006 and Crl.M.P.No.2723/06 in the above cases and all of them are pending. I am also aware that it is very likely of his coming out on bail in all the above cases except in Central Crime Branch "X" Crime No.633/2006 (bailable by Sessions Court) since in similar cases bails are granted by the same Court. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order. On the materials placed before me, I am fully satisfied that the said Thiru. Venkatesan @ Maya Venkatesan is a Goonda and that there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future which are prejudicial to the maintenance of public order under the provisions of the Tamil Nadu Act 14 of 1982."

The learned senior counsel submitted that a reading of the above said passage shows that though the Detaining Authority was of the opinion that there is no possibility of the detenu coming out on bail in respect of the case in Central Crime Branch "X" Crime No.633/2006, the Detaining Authority has mechanically stated that if he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order. The learned senior counsel submitted that even in the opinion of the Detaining Authority there is no imminent possibility of the detenu coming out on bail in respect of the said case but yet has passed the

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detention order, which will clearly amount to non application of mind on the part of the Detaining Authority.

(ii) The learned Senior counsel further submitted that the detenu sent his representation dated 14.09.2006 to the Government and the Government after calling for the remarks received the same on 22.09.2006 and the same was dealt with by the Minister on 30.09.2006 but rejection letter was sent to the detenu on 09.10.2006 only and the intervening delay in disposing of the representation of the detenu has not been explained and therefore the valuable right of the detenu has been affected and on that ground the order of detention is liable to be quashed.

4. Per contra, the learned Additional Public Prosecutor submitted that it is not correct to state that the Detaining Authority was under the opinion that there is no imminent possibility of the detenu coming out on bail in Crime No.633/2006. The learned Additional Public Prosecutor further submitted that though the Minister dealt with the representation on 30.09.2006 because of the intervening holidays on 01.10.2006, 02.10.2006, 07.10.2006 and 08.10.2006, the rejection letter could not be sent promptly to the detenu.

5. The learned Additional Public Prosecutor further submitted that the detenu is involved in more than 6 cases of cheating and huge amounts have been misappropriated by the detenu and several persons are affected.

6. We have carefully considered the rival submissions made on either side.

7. Even in the affidavit filed by the petitioner under ground 'd' it is stated as follows:

> "(d) It is submitted that the sponsoring authority, the second respondent had admitted in the grounds of Detention that the detenue is very likely to come out on bail in all the ad verses cases except in Central Crime Branch 'X' Crime No.633/2006, since in similar cases bails are granted by the same court. In other words, the sponsoring authority is of the opinion that there is no imminent possibility of the detenue coming out on bail relating to the case in Central Crime Branch 'X' Crime No.633/2006, hence there is no necessity to invoke Act 14 of 1982, and the detenue had been detained as "Goonda" due to non-application of mind by the detaining authority, hence the detention order is shall to be quashed."

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while dealing with the said contention the Detaining Authority in the counter affidavit filed by her in para 8 has stated as follows:

> "Para 8..... I submit that it is not correct to state that this respondent was under the opinion that there is no imminent possibility to the detenu coming out on bail in Crime No.633/2006....."

8. Except the above said averment in the counter affidavit nothing has been stated explaining the averment contained in para 4 of the grounds of detention. A reading of para 4 of the grounds of detention clearly shows that the Detaining Authority was of the opinion that except in Central Crime Branch 'X' Crime No.633/2006, it is very likely for the detenu to come out on bail in the other cases. When there was no imminent possibility of the detenu coming out on bail in respect of Central Crime Branch 'X' Crime No.633/2006, there was no necessity for detaining the detenu. Therefore, in our considered view the subjective satisfaction arrived at by the Detaining Authority is vitiated as a result of non application of mind on the part of the Detaining Authority. On this ground the Detention Order is liable to be set aside.

9. While coming to the question of delay in dealing with the representation of the detenu, it has to be pointed out that admittedly the Minister dealt with the representation on 30.09.2006 and though 01.10.2006, 02.10.2006, 07.10.2006 and 08.10.2006 happened to be holidays, between 30.09.2006 to 09.10.2006 four clear working days were available for the Minister to deal with the representation of the detenu and pass orders thereon, whereas the rejection letter was sent to the detenu only on 09.10.2006 and hence there is unexplained delay of four days which the learned Additional Public Prosecutor is unable to explain.

10. In this context, it is useful to refer to the decision of the Apex Court reported in Rajammal Vs. State of Tamil Nadu and another (AIR 1999 Supreme Court 684) in para 9 & 10 the Apex Court has held as follows:

> "Para 9. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the

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representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

Para.10. What happened in this case was that the Government which receives remarks from different authorities submitted that relevant files before the Under Secretary for processing it on the next day. The Under Secretary forwarded it to the Deputy Secretary on the next working day. Thus there is some explanation for the delay till 09.02.1998. Thereafter, the file was submitted before the Minister who received it while he was on tour. The Minister passed the order only on 14.02.1998. Though there is explanation for the delay till 9-2-1998, we are unable to find out any explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only on 14-2-1998 is not a justifiable explanation, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen."

Thus it is clear that the Government is bound to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. The test is not the duration or range of delay, but how it is explained by the authority concerned. In this case, as pointed out above, there is absolutely no explanation for the delay of four days. It is a constitutional obligation to consider the representation forwarded by the detenu without any delay, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Hence on this ground also the order of detention is liable to be quashed.

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11. Though the detneu is said to be involved in six cases of cheating and misappropriation involving very huge amounts and the allegations made against the detenu are serious, we are constrained to quash the order of detention for the above said reasons. The Habeas Corpus Petition is accordingly allowed and the order of detention passed by the second respondent in proceedings dated 15.08.2006 against the detenu is quashed and the detenu is

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directed to be set at liberty forthwith from custody unless he is required in connection with any other case.

kk

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary to the Government
   Prohibition and Excise Dept.,
   Secretariat, Chennai - 600 009.

2. The Commissioner of Police
   Greater Chennai, Chennai.

3. The Public Prosecutor
   Madras High Court, Chennai.

+ 2 ccs to A. Madhumathi, Advocate SR No. 21897

Order in
H.C.P.No.1097 of 2006

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